



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

REPORT OF THE

STANDING COMMITTEE ON UNIFORM

LEGISLATION AND GENERAL PURPOSES

IN RELATION TO THE

UNCLAIMED MONEY (SUPERANNUATION

AND RSA PROVIDERS) BILL 2002

Presented by Hon Adele Farina MLC (Chairman)

Report 7
April 2003

STANDING COMMITTEE ON UNIFORM LEGISLATION AND GENERAL PURPOSES

Date first appointed:

April 11 2002

Terms of Reference:

The following are extracts from Schedule 1 and Standing Order 230A of the Legislative Council Standing Orders:

“7. Uniform Legislation and General Purposes Committee

- 7.1 A Uniform Legislation and General Purposes Committee is established.
- 7.2 The Committee consists of 3 members with power in the Committee to co-opt 2 additional members for a specific purpose or inquiry.
- 7.3 The functions of the Committee are –
- (a) to consider and report on bills referred under SO 230A;
 - (b) of its own motion or on a reference from a minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
 - (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
 - (d) to consider and report on any matter referred by the House.
- 7.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

Members as at the time of this inquiry:

Hon Adele Farina MLC (Chairman)

Hon Paddy Embry MLC

Hon Simon O'Brien MLC

Staff as at the time of this inquiry:

Felicity Mackie, Advisory Officer (Legal)

Sheena Hutchison, Committee Clerk

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

Website: <http://www.parliament.wa.gov.au>

ISBN 0 7307 6485 0

CONTENTS

1	REFERENCE	1
2	INQUIRY PROCEDURE	1
3	UNIFORM LEGISLATION	1
4	STRUCTURE OF THE REPORT	2
5	COMMONWEALTH LEGISLATION.....	2
	Background to the Commonwealth Legislation.....	2
	Purpose of the Commonwealth Legislation	4
	Passage of the Commonwealth Legislation	5
6	PURPOSE OF THE UNCLAIMED MONEY (SUPERANNUATION AND RSA PROVIDERS) BILL 2002.....	5
7	OVERVIEW OF THE UNCLAIMED MONEY (SUPERANNUATION AND RSA PROVIDERS) BILL 2002.....	6
8	COMMENT ON SELECTED CLAUSES OF THE UNCLAIMED MONEY (SUPERANNUATION AND RSA PROVIDERS) BILL 2002	7
	Clause 4 - Meaning of terms used in this Act	7
	Clause 6 - Statement of unclaimed money (Commonwealth Act s.18(4) and (5) table items 1 and 2).....	8
	Clause 7 - Payment of unclaimed money to the Treasurer (Commonwealth Act s.18(4) table item 3)	9
	Clause 9 - Discharge of superannuation providers from liability	9
	Clause 11 - Register of unclaimed money (Commonwealth Act s.18(4) table item 4).....	9
	Clause 12 - Publication etc. of information in the register	9
	Clause 13 - Payment of unclaimed money by the Treasurer (Commonwealth Act s.18(5) table items 3 and 4).....	9
	Clause 14 - Access to premises and Clause 15 - Obtaining information and documents	10
	Clause 17 - Information may be recorded or divulged only for the purposes of this Act.....	11
	Clause 22 - Approved forms	11
9	MISCELLANEOUS COMMENTS	12
 APPENDIX 1 MEANINGS OF TERMS USED IN THE UNCLAIMED MONEY (SUPERANNUATION AND RSA PROVIDERS) BILL 2002 BUT DEFINED IN COMMONWEALTH ACTS.....		
	<u>Definitions from the Commonwealth Superannuation (Unclaimed Money and Lost Members) Act 1999.....</u>	15
	<u>Definitions from the Commonwealth Superannuation Industry (Supervision) Act 1993</u>	16
	<u>Definitions from the Commonwealth Retirement Savings Accounts Act 1997.....</u>	19
	<u>Definitions from the Commonwealth Life Insurance Act 1995.....</u>	20

**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND GENERAL
PURPOSES**

**IN RELATION TO THE UNCLAIMED MONEYS (SUPERANNUATION AND RSA PROVIDERS)
BILL 2002**

1 REFERENCE

- 1.1 On March 4 2003 the Unclaimed Money (Superannuation and RSA Providers) Bill 2002 (Bill) stood referred to the Uniform Legislation and General Purposes Committee (Committee) pursuant to Standing Order 230A. Standing Order 230A(4) requires that the Committee report to the Legislative Council (Council) within 30 days of the first reading of the Bill, being April 2 2003.
- 1.2 Pursuant to Standing Order 230A(5) the policy of the Bill is not a matter for inquiry by the Committee.

2 INQUIRY PROCEDURE

- 2.1 With the Bill being referred on March 4 2003 the Committee at its meeting on March 5 2003 resolved to write to Hon Eric Ripper MLA, Treasurer, seeking specific information about a number of aspects of the Bill. The Committee also resolved to conduct a briefing on the Bill with a representative from the Western Australian Department of Treasury and Finance.
- 2.2 Mr Josef Netolicky, Assistant Director, Accounting Operations, Department of Treasury and Finance, provided a briefing on the Bill at the Committee's meeting on March 12 2003. The Committee thanks Mr Netolicky for his assistance.
- 2.3 The Committee received a response from Hon Eric Ripper MLA to its request for information by way of a letter, undated but delivered to the Legislative Council Committee Office on March 11 2003.
- 2.4 Details of the inquiry were also placed on the parliamentary website on the Internet.

3 UNIFORM LEGISLATION

- 3.1 The Bill is an example of 'uniform legislation'. Uniform legislation arises out of national uniform schemes of legislation and intergovernmental agreements.
- 3.2 The scrutiny of uniform legislation is not new to the Western Australian Parliament. Since 1991, both the Council and the Legislative Assembly have established procedures to assist Parliament in the scrutiny of national schemes of legislation.

3.3 For a discussion on scrutiny of uniform legislation in the Western Australian Parliament, legislative structures and legislative scrutiny principles please refer to pages 1-3 of the Committee's First Report (www.parliament.wa.gov.au and follow the links from 'Committees') in relation to the Offshore Minerals Bill 2001, the Offshore Minerals (Registration Fees) Bill 2001 and the Offshore Minerals (Consequential Amendments) Bill 2001.

4 STRUCTURE OF THE REPORT

4.1 The Bill contains 26 clauses in five Parts:

- i) Part 1 – Preliminary;
- ii) Part 2 – Obligations of superannuation providers;
- iii) Part 3 – Administration;
- iv) Part 4 – Privacy; and
- v) Part 5 – Miscellaneous.

4.2 Details of selected clauses of the Bill are provided together with Committee comment where appropriate at section 8 of this report.

5 COMMONWEALTH LEGISLATION

5.1 On June 30 1999 the Superannuation (Unclaimed Money and Lost Members) Bill 1999 (Cth Bill) and the Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Bill 1999 (Cth Consequential and Transitional Bill) were introduced into the House of Representatives.

Background to the Commonwealth Legislation

5.2 When the Commonwealth *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee Act 1992* were enacted they provided a significant extension of superannuation to the workforce. With this increased coverage, many casual and itinerant workers and those with disrupted employment patterns became 'lost members' in the sense that they lost the paperwork associated with their account, were never given the paperwork because they terminated employment before their superannuation guarantee contributions were made, or lost contact with their fund in other circumstances.

5.3 In 1992 the Commonwealth Government announced the establishment of the Commonwealth unclaimed money register and the Commonwealth lost members register to maximise the prospect of superannuation members receiving contributions made on their behalf.

- 5.4 The concepts of unclaimed money and lost members are defined for superannuation funds in the *Superannuation Industry (Supervision) Act 1993* (Cth) and its regulations and for Retirement Savings Accounts (RSA) in the *Retirement Savings Accounts Act 1997* (Cth) and its regulations.
- 5.5 Unclaimed monies occur where a superannuation fund or RSA provider holds money on behalf of a member or account holder and:
- the person has reached eligibility age for the aged pension (currently 65 for males and 62 increasing to 65 in 2013 for females. The minimum age for women to get the Age Pension began to increase from July 1 1995 and will continue to increase until it reaches 65 by 2013, making it the same for everyone. Until then, the qualifying age depends on the date of birth¹);
 - under the terms of the superannuation fund or RSA a benefit, other than a pension or annuity, is immediately payable to the person;
 - the superannuation provider has not received an amount in respect of the member for at least two years; and
 - after taking reasonable steps to find the person, the superannuation fund or RSA provider is unable to pay the benefit as they cannot locate the person.²
- 5.6 If the member of the superannuation fund or RSA holder has died, the same rules apply with the superannuation fund or RSA provider having to take reasonable steps to locate the beneficiary entitled to the benefit.³
- 5.7 The consequences of money becoming ‘unclaimed’ are similar for superannuation funds and RSA providers in that they are paid to government bodies rather than being retained. No interest is payable on such funds.
- 5.8 Although unclaimed money is governed by Commonwealth legislation, if a State or Territory has consistent legislation, superannuation providers are required to pay and report information in respect of unclaimed money to State and Territory unclaimed money registers (rather than the Commonwealth unclaimed money register).
- 5.9 The Australian Taxation Office estimated that as at May 1999 there were approximately 2.5 million lost members throughout Australia and \$2 billion in

¹ Letter from Mr Josef Netolicky, Assistant Director Accounting Operations, Western Australian Department of Treasury and Finance to the Committee dated March 12 2003.

² *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth) section 12. See also section 14 which deals with the definition of “unclaimed money” in relation to a deceased member.

³ Ibid.

unclaimed money which includes lost member entitlements held in trust by superannuation funds.⁴

Purpose of the Commonwealth Legislation

5.10 The Commonwealth Bills Digest No.8 of 1999-2000 stated that the purpose of the Cth Bill was to:

- consolidate existing provisions relating to the notification and payment of unclaimed superannuation money and the notification of lost members of superannuation entities;
- reduce from two to one the number of Commonwealth entities involved in unclaimed money and lost members; and
- provide that for State and Territory authorities to be able to collect the unclaimed money they must operate under laws that meet similar requirements to those applicable to the proposed single Commonwealth entity involved in that area.

5.11 The general object of the Cth Bill was to reunite people with their superannuation and improve and consolidate arrangements relating to unclaimed money and lost members.⁵

5.12 The specific objects of the Cth Bill were set out in detail in clause 6 of the Cth Bill and were to provide for:

- the keeping of registers of details relating to unclaimed money, so that the money can be claimed by persons entitled to it;
- the keeping of a register of details relating to lost members, so that the benefits of lost members can be claimed by persons entitled to them;
- the matching of unclaimed money and persons entitled to it;
- the matching of benefits of lost members and persons entitled to them;
- the safe-keeping of unclaimed money until the money is claimed by a person entitled to it;
- the co-ordination of the collection of unclaimed money between the Commonwealth, States and Territories; and

⁴ Commonwealth Bills Digest No.8 1999-2000, p3.

⁵ Explanatory Memorandum for the Commonwealth Superannuation (Unclaimed Money and Lost Members) Bill 1999, p5.

- the co-ordination of the matching of unclaimed money and persons entitled to it between the Commonwealth, States and Territories.
- 5.13 The most significant aspect of the Cth Bill in relation to the Bill currently before the Committee is the transfer to the State, from the Commonwealth, of the administration of unclaimed money held by superannuation funds and RSA providers.
- 5.14 The Commonwealth Bills Digest No.9 of 1999-2000 stated that the purpose of the Cth Consequential and Transitional Bill was to allow two years for the States and Territories to adapt their laws to meet the requirements of the Cth Bill relating to State and Territory authorities receiving unclaimed money and reporting standards for unclaimed money and lost members.
- 5.15 The Committee notes that the Cth Consequential and Transitional Bill only applied where a State or Territory had legislation requiring a superannuation provider to provide details and pay unclaimed money to a State authority prior to the commencement of the Cth Bill. As there was no legislation regarding unclaimed superannuation monies in Western Australia prior to the commencement of the Cth Bill, the transitional arrangements did not apply in Western Australia.

Passage of the Commonwealth Legislation

- 5.16 The House of Representatives passed the two bills on August 12 1999 and on August 23 1999 they were introduced into the Senate. The Senate Scrutiny of Bills Committee reported on the two bills in its Alert Digest No.11 of 1999. The Alert Digest can be viewed on the Commonwealth Parliament's website at www.aph.gov.au, following the links from 'Committees'.
- 5.17 The Senate passed the two bills on September 23 1999 and they were assented to on October 13 1999.
- 5.18 For ease of reference the Commonwealth *Superannuation (Unclaimed Money and Lost Members) Act 1999* will be referred to as the Cth Act.

6 PURPOSE OF THE UNCLAIMED MONEY (SUPERANNUATION AND RSA PROVIDERS) BILL 2002

- 6.1 In his Second Reading Speech Hon Nick Griffiths MLC stated that "*The primary purpose of this Bill is to transfer to the State from the Commonwealth the administration of unclaimed money held by superannuation funds and retirement savings account - RSA - providers.*"⁶

⁶ Hon Nick Griffiths MLC, *Parliamentary Debates (Hansard)*, Thirty-Sixth Parliament, Second Session, March 4 2003, p 4899.

- 6.2 Hon Nick Griffiths MLC noted that the proposed transfer would occur under an arrangement developed in consultation between the Commonwealth and State and Territory Governments aimed at achieving the transfer under a coherent nationwide scheme.
- 6.3 The Committee notes that the Bill is complementary to legislation passed by the Commonwealth and is similar to that introduced by other States and Territories. At its briefing with Mr Netolicky from the Department of Treasury and Finance, the Committee was advised that all other Australian States and Territories have had similar legislation in place for several years. Mr Netolicky advised that the legislation reached the drafting stage in Western Australia approximately two years ago, however as a result of the State election in 2001 a delay occurred in the Bill being introduced at that time.

7 OVERVIEW OF THE UNCLAIMED MONEY (SUPERANNUATION AND RSA PROVIDERS) BILL 2002

- 7.1 In his Second Reading Speech Hon Nick Griffiths MLC stated that *“The general objective of the scheme to be applied by the Bill is to identify legitimate recipients - members - of superannuation funds and retirement savings accounts - RSAs - with unclaimed moneys and to improve and consolidate existing arrangements for the administration of lost members’ entitlements.”*⁷
- 7.2 The Bill will require superannuation providers to pay unclaimed superannuation benefits to an authority of the State of Western Australia rather than to the Australian Taxation Office, which is the present requirement.
- 7.3 The Bill requires superannuation providers to notify the State Treasurer at six-monthly intervals of amounts that become ‘unclaimed’ in the previous six months. They are required to pay the outstanding unclaimed monies to the Treasurer at the time of notification.
- 7.4 The Treasurer must maintain an unclaimed superannuation money register for the purpose of processing claims from those people entitled to repayment of benefits. The Bill includes provisions requiring details of unclaimed amounts to be made available to the public. On request by a person entitled to receive that money, the Treasurer must pay it to that person.
- 7.5 In his letter to the Committee, and in response to its request, Hon Eric Ripper MLA provided an outline of the advantages and disadvantages to the State as a participant in the scheme. With respect to the advantages to Western Australia, Hon Eric Ripper MLA advised that:

⁷ Ibid.

*By integrating the closely related functions the State provides an enhanced service to the local community by ensuring that beneficiaries are given every opportunity to reclaim benefits to which they are entitled. To the extent that moneys remain unclaimed, they are available to be applied to public purposes in the State, rather than the Commonwealth.*⁸

- 7.6 With respect to the disadvantages to the State as a participant in the scheme, Hon Eric Ripper MLA advised that:

There will be some compliance costs in the administration of this scheme. The cost is expected to be minimal, as it will complement the unclaimed money function already carried out by the State.

- 7.7 In response to a request for certain specific information from the Australian Taxation Office, the Committee received a letter from Ms Lesley East, Assistant Deputy Commissioner, Superannuation, Australian Taxation Office, dated March 18 2003. Ms East informed the Committee that it was estimated that approximately \$300 000 will be paid to Western Australia on enactment of the Bill. Ms East advised that this will be subject to claim by persons who become aware their money is held in Western Australia. This amount includes all money held by the Australian Taxation Office for Western Australia.⁹

- 7.8 Ms East informed the Committee that she was unable to provide a breakdown of the funds paid to other States and Territories on the enactment of their similar legislation. She noted that most States had enacted legislation before the unclaimed money legislation came into effect.

8 COMMENT ON SELECTED CLAUSES OF THE UNCLAIMED MONEY (SUPERANNUATION AND RSA PROVIDERS) BILL 2002

Clause 4 - Meaning of terms used in this Act

- 8.1 This clause contains the definitions required for the purpose of the Act.
- 8.2 The Committee notes that the meanings of a substantial number of terms in the Bill are defined by reference to various sections and Parts of numerous Commonwealth Acts and in many cases simply by reference to the entire Commonwealth Act. This makes it very difficult for people reading the Bill, and in particular members

⁸ Letter from Hon Eric Ripper MLA to the Committee, undated but received on March 11 2003.

⁹ Letter from Ms Lesley East, Assistant Deputy Commissioner, Superannuation, Australian Taxation Office, March 18 2003.

considering and debating the Bill in the Council, to access all the legislation referred to in a short period of time.¹⁰

- 8.3 The Committee believes that, for ease of reference when considering the Bill, it would have greatly assisted members if the meanings of all terms defined by reference to a Commonwealth Act had been included in the Explanatory Memorandum or the Minister's Second Reading Speech to the Bill had no Explanatory Memorandum been provided in the Council.

Recommendation 1: The Committee recommends that in future, and as a matter of general practice, where a Bill contains terms that are defined by reference to Commonwealth legislation, those Commonwealth definitions be set out in the Explanatory Memorandum or Second Reading Speech to the Bill if no Explanatory Memorandum is provided in the Legislative Council.

- 8.4 To assist with debate on the Bill, the Committee has set out the meanings of terms used in the Bill but defined in Commonwealth Acts in Appendix 1 of this report.

Clause 6 - Statement of unclaimed money (Commonwealth Act s.18(4) and (5) table items 1 and 2)

- 8.5 This clause provides that a superannuation provider must give to the Treasurer a statement, in an approved form, of all unclaimed money at the end of each half-year. If the superannuation provider has paid money to the person entitled to it between the end of the relevant half year and the giving of the statement to the Treasurer, the statement must contain details of this amount.
- 8.6 The statement of unclaimed money is to be given to the Treasurer by November 1 with respect to the half year ending June 30 and May 1 with respect to the half year ending 31 December, although the Treasurer has power to extend this period.
- 8.7 It will be an offence, with a maximum penalty of \$11 000, to breach these requirements. The Committee notes that section 16(5) of the Cth Act also makes it an offence to breach similar requirements in the Cth Act, and that the maximum penalty is 100 penalty units. Under the Cth Act, one penalty unit is equal to \$110. Thus the Cth Act and State Bill provide for equivalent penalties for this offence.

¹⁰ The Committee notes that subsequent amendments to the definitions in the Cth Act will automatically flow through to affect the State legislation. Section 16(3) of the *Interpretation Act 1984* provides that "A reference in a written law to an Imperial Act or a Commonwealth Act, or to a provision of an Imperial Act or a Commonwealth Act, shall be construed so as to include a reference to such Act or provisions as it may from time to time be amended."

Clause 7 - Payment of unclaimed money to the Treasurer (Commonwealth Act s.18(4) table item 3)

- 8.8 This clause deals with the payment of unclaimed money to the Treasurer. The superannuation provider is to pay to the Treasurer the difference between the amount of unclaimed money held by the fund and any amount listed as unclaimed but subsequently paid to the successful claimant.
- 8.9 It will be an offence to breach this requirement, with a maximum penalty of \$11 000. Again, this penalty is equivalent with the penalty provided in the Cth Act.

Clause 9 - Discharge of superannuation providers from liability

- 8.10 The superannuation provider is discharged from further liability in respect of the unclaimed money upon payment of the money to the Treasurer.

Clause 11 - Register of unclaimed money (Commonwealth Act s.18(4) table item 4)

- 8.11 Clause 11 provides that the Treasurer must keep a register that contains particulars of unclaimed money paid by a superannuation provider to the Treasurer and each member entitled to the unclaimed money.

Clause 12 - Publication etc. of information in the register

- 8.12 Clause 12 provides that the Treasurer may authorise information in the register to be published in the *Gazette* or made available to the public or to a particular person in such manner as the Treasurer determines. The authorisation may extend to so much of the information in the register as the Treasurer considers appropriate.
- 8.13 Tax file numbers are specifically excluded from the information that may be published.

Clause 13 - Payment of unclaimed money by the Treasurer (Commonwealth Act s.18(5) table items 3 and 4)

- 8.14 This clause provides that the Treasurer must pay unclaimed money to a person if unclaimed money has been paid to the Treasurer by a superannuation provider and the Treasurer is satisfied that the superannuation provider who paid the unclaimed money to the Treasurer would have paid the unclaimed money to the person.
- 8.15 The Committee notes that no interest is payable on the unclaimed money, and there is no limitation period for claiming the money.
- 8.16 If a superannuation provider satisfies the Treasurer that the money sent by the provider to the Treasurer in respect of a person was greater than the person's

entitlement, the difference between the amount paid and the person's entitlement is to be refunded to the provider.

- 8.17 The Consolidated Fund is appropriated for the purposes of receipt and payment of unclaimed money.

Clause 14 - Access to premises and Clause 15 - Obtaining information and documents

- 8.18 Clauses 14 and 15 of the Bill deal with access to premises and information gathering powers. The Committee notes that similar provisions are found in other Acts administered by the Treasurer, an example being section 45 of the *Payroll Tax Assessment Act 1971*.

- 8.19 The access and information gathering powers may be used, for example, to ensure that a superannuation provider has reported the information it has in respect of a member with unclaimed money.

- 8.20 The Committee notes that in commenting on the equivalent sections of the Cth Bill (sections 46 and 47) the Commonwealth Explanatory Notes stated that "*This information is critical to the function of the registers and in such a case, it may be necessary for the Commissioner to inspect documents which may not otherwise be available for inspection and information gathering powers were not included in the Act.*"¹¹

- 8.21 The Committee also notes the comments made by the Senate Scrutiny of Bills Committee in the Senate Scrutiny of Bills Alert Digest No.11 of 1999 that its inquiry into search and entry provisions in Commonwealth legislation had "*...so far demonstrated that provisions which authorise entry to premises without a judicially sanctioned warrant are common throughout the tax legislation, but are much less common elsewhere.*"¹²

- 8.22 The Senate Scrutiny of Bills Committee did not form a view on the desirability of the inclusion of search and entry provisions in the tax legislation, but nevertheless drew the attention of the Senate to the "*...anomalous nature of these powers.*"¹³

- 8.23 The Committee likewise draws the Council's attention to these powers.

- 8.24 Under clause 14 an authorised officer must be given entry, at any reasonable time, to land or premises. The officer must also be given full and free access to all books,

¹¹ Explanatory Memorandum for the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth), p17.

¹² Senate Scrutiny of Bills Committee, Scrutiny of Bills Alert Digest No.11 of 1999, p15.

¹³ Ibid.

records and other documents held by any person, and has the right to inspect, examine or make copies from those documents.

- 8.25 The Committee notes that an “authorised officer” is the holder of a specified office in the Public Service who has been authorised in writing by the Treasurer to carry out certain duties. (Refer to clauses 4 and 24 of the Bill.)
- 8.26 The officer is not entitled to remain on the land or premises unless written authority signed by the Treasurer is produced at the request of the occupier.
- 8.27 However the occupier of land or premises entered or proposed to be entered by an authorised officer is required to provide the officer with all reasonable facilities and assistance to carry out official duties. For example, an authorised officer will be entitled to reasonable use of photocopying, telephone, facsimile and light and power facilities and of work space and facilities to extract relevant information stored on computer. In addition, the authorised officer will be entitled to reasonable assistance in the form of, for example, advice as to where relevant documents are located and access to areas where such documents are located.
- 8.28 The maximum penalty on conviction for failure to comply with the access to premises provisions is a fine of \$1 100.
- 8.29 Under clause 15 the Treasurer will also be able to require, by notice in writing, any person to give information on oath or otherwise, attend before the Treasurer and answer questions on oath or otherwise and produce any documents in the custody or under the control of that person.
- 8.30 The regulations must prescribe scales of expenses to be allowed to persons required to attend before the Treasurer.
- 8.31 The maximum penalty on conviction for failure to comply with the requirements of this provision is a fine of \$2 200.

Clause 17 - Information may be recorded or divulged only for the purposes of this Act

- 8.32 Part 4 of the Bill contains privacy provisions.
- 8.33 Clause 17 provides that it will be an offence to record or divulge information provided under the Bill except for the operation of the Bill. A person who commits a breach of privacy is liable to a term of imprisonment of up to two years.

Clause 22 - Approved forms

- 8.34 Clause 22 sets out the requirements for a notice to be in the “approved form.”

8.35 The Committee notes that an approved form may extend to electronic transmissions, mediums and forms and may apply to more than one notice, application, statement or other document.

9 MISCELLANEOUS COMMENTS

9.1 In his letter to the Committee, and in response to its request, Hon Eric Ripper MLA provided an explanation as to whether, and by what mechanism the State can opt out of the scheme.

9.2 Hon Eric Ripper MLA advised that the State can opt out of the opportunity provided by the Cth Act by either repealing the Bill (once it is an Act) or amending it to the extent that it no longer complies with the requirements of the Cth Act.

9.3 He noted that in the latter case, it is assumed that amending the State *Unclaimed Money (Superannuation and RSA Providers) Act* (WA) so that it no longer complies with the requirements of the Cth Act will cause it to be inconsistent with the Cth Act which would then prevail because of section 109 of the Constitution.¹⁴

9.4 Hon Eric Ripper MLA noted that *“In either case, the result would be that unclaimed money in the hands of Western Australian superannuation and RSA providers would again have to be paid to the Commonwealth.”*¹⁵

9.5 The Committee notes that the Commonwealth will have no capacity to amend the State Act as the State Act will not apply Commonwealth legislation. However the Committee also notes that the Commonwealth could affect the law on unclaimed money and superannuation and RSA providers in Western Australia by amending the Cth Act in such a way that the State Act no longer complies with the Cth Act’s requirements.

9.6 Hon Eric Ripper MLA advised the Committee that *“In that case, and in the absence of any amendments to the Unclaimed Money (Superannuation and RSA Providers) Act to make it comply, one would assume that it would be inconsistent with the Commonwealth Act, which would then prevail because of section 109 of the Constitution.”*¹⁶

9.7 The Committee addressed this issue at the briefing with Mr Netolicky and in particular the level of consultation, if any, there will be with the Commonwealth to

¹⁴ Section 109 of the *Commonwealth of Australia Constitution Act 1900* provides that *“When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.”*

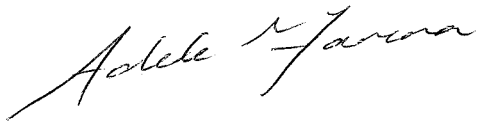
¹⁵ Letter from Hon Eric Ripper MLA to the Committee, undated but received on March 11 2003.

¹⁶ Ibid.

ensure that the subsequent changes of definitions in relevant Commonwealth Acts do not result in Western Australia's unintended non-compliance.

- 9.8 In a letter to the Committee dated March 12 2003 Mr Netolicky advised that "*The Commonwealth has no obligation to consult with the States. The past practice indicates the willingness of the Commonwealth to keep the States informed and seek greater co-operation between Commonwealth and State unclaimed money registers. Upon enactment of Western Australian legislation this issue will be explored with the Commonwealth.*"¹⁷

Recommendation 2: The Committee recommends that the Unclaimed Money (Superannuation and RSA Providers) Bill 2002 be passed.



Hon Adele Farina MLC

Chairman

April 1 2003

¹⁷ Letter from Mr Josef Netolicky, Assistant Director Accounting Operations, Western Australian Department of Treasury and Finance to the Committee dated March 12 2003.

APPENDIX 1
MEANINGS OF TERMS USED IN THE UNCLAIMED MONEY
(SUPERANNUATION AND RSA PROVIDERS) BILL 2002 BUT
DEFINED IN COMMONWEALTH ACTS

Definitions from the Commonwealth *Superannuation (Unclaimed Money and Lost Members) Act 1999*

Eligibility age

Meaning of *eligibility age*

- (1) In this Act, *eligibility age* means:
- (a) in the case of a man—65 years or, if another age is prescribed by the regulations, the age so prescribed; or
 - (b) in the case of a woman—60 years or, if another age is prescribed by the regulations, the age so prescribed.
- (2) In determining whether a member of a fund has reached eligibility age:
- (a) if the superannuation provider does not know whether the member is a man or a woman—the member is taken to be a man; and
 - (b) if the superannuation provider does not know the member's date of birth—the superannuation provider may determine that the member:
 - (i) attained a particular age on a particular date (if the superannuation provider reasonably believes that to be the case); or
 - (ii) turned 18 on the day on which he or she first became a member of the fund; or
 - (iii) turned 18 on the day on which the superannuation provider first received an amount in respect of him or her; or
 - (iv) turned 18 at the start of his or her eligible service period.

Duty to obtain date of birth and sex of member of fund

- (3) If a superannuation provider does not know the date of birth or sex of a member of a fund, the provider should make reasonable attempts to obtain that information.

Duty to keep records of date of birth and sex of member of fund

- (4) If a superannuation provider knows the date of birth or sex of a member of a fund, the provider should keep records of that information.

superannuation provider

superannuation provider means:

- (a) the trustee of a regulated superannuation fund; or
- (b) the trustee of an approved deposit fund; or
- (c) an RSA provider.

Definitions from the Commonwealth *Superannuation Industry (Supervision) Act 1993*

approved deposit fund

approved deposit fund means a fund that:

- (a) is an indefinitely continuing fund; and
- (b) is maintained by an approved trustee solely for approved purposes.

[NB: indefinitely continuing fund not defined in the SIS Act]

approved trustee means a constitutional corporation in relation to which an approval under section 26 is in force.

approved purposes, in relation to a fund, means:

- (a) the purpose of receiving on deposit:
 - (i) amounts that will be taken by section 27D of the Income Tax Assessment Act to be expended out of eligible termination payments within the meaning of that section; and
 - (ii) amounts paid under Part 24 of this Act; and
 - (iii) amounts paid under section 65 of the *Superannuation Guarantee (Administration) Act 1992*; and
- (b) the purpose of dealing with such amounts, in accordance with the rules of the fund, in any way calculated directly or indirectly to enhance the value of, or render profitable, property of the fund; and
- (c) subject to any inconsistent requirement in the standards from time to time applicable to the fund under section 32, the purpose of paying to beneficiaries, or to the legal personal representatives of beneficiaries, upon request, amounts equal to the beneficiary's interest in the fund; and
- (d) such other purposes (if any) as APRA approves in writing.

constitutional corporation means a body corporate that is:

- (a) a trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
- (b) a financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution).

regulated exempt public sector superannuation scheme

regulated exempt public sector superannuation scheme means an exempt public sector superannuation scheme in respect of which either of the following applies:

- (a) the trustee of the scheme is a constitutional corporation;

- (b) the sole or primary purpose of the scheme is the provision of old-age pensions.

[see s.299W of the SIS Act]

exempt public sector superannuation scheme means a public sector superannuation scheme that is specified in regulations made for the purposes of this definition.

public sector superannuation scheme means a scheme for the payment of superannuation, retirement or death benefits, where the scheme is established:

- (a) by or under a law of the Commonwealth or of a State or Territory; or
 (b) under the authority of:
- (i) the Commonwealth or the government of a State or Territory; or
 - (ii) a municipal corporation, another local governing body or a public authority constituted by or under a law of the Commonwealth or of a State or Territory.

regulated superannuation fund

regulated superannuation fund has the meaning given by section 19.

superannuation fund means:

- (a) a fund that:
- (i) is an indefinitely continuing fund; and
 - (ii) is a provident, benefit, superannuation or retirement fund; or
- (b) a public sector superannuation scheme.

[NB: indefinitely continuing fund not defined in the SIS Act]

19 Regulated superannuation fund

Definition

- (1) A regulated superannuation fund is a superannuation fund in respect of which subsections (2) to (4) have been complied with.

Fund must have a trustee

- (2) The superannuation fund must have a trustee.

Trustee must be a constitutional corporation or fund must be a pension fund

- (3) Either of the following must apply:
- (a) the trustee of the fund must be a constitutional corporation pursuant to a requirement contained in the governing rules;
 - (b) the governing rules must provide that the sole or primary purpose of the fund is the provision of old-age pensions.

Election by trustee

- (4) The trustee or trustees must have given to APRA, or such other body or person as is specified in the regulations, a written notice that is:

- (a) in the approved form; and
 - (b) signed by the trustee or each trustee;
- electing that this Act is to apply in relation to the fund.

Note: The approved form of written notice may require the trustee to set out the tax file number of the fund. See subsection 299U(1).

Regulations

- (4A) Without limiting subsection (4), regulations for the purposes of that subsection may specify that notices are to be given to different persons or bodies in respect of different classes of superannuation funds.

Election is irrevocable

- (5) An election made as mentioned in subsection (4) is irrevocable.

Trustee has power to make election despite anything in the governing rules etc.

- (6) The trustee or trustees have the power to make an election as mentioned in subsection (4) despite anything in the governing rules of the fund.

Certain funds must become regulated superannuation funds

- (7) If all of the following conditions are satisfied in relation to a superannuation fund at any time during the period beginning on the day on which this Act received the Royal Assent and ending at the end of the fund's 1993-94 year of income:

- (a) the fund has a trustee;
- (b) either:
 - (i) the trustee of the fund is a constitutional corporation; or
 - (ii) the governing rules of the fund provide that the sole or primary purpose of the fund is the provision of old-age pensions;
- (c) the fund is not a public sector superannuation scheme;
- (d) there is in force a notice under section 12 or 13 of the *Occupational Superannuation Standards Act 1987* stating that the Commissioner is satisfied that the fund satisfied, or should be treated as if it had satisfied, the superannuation fund conditions in relation to a particular year of income;
- (e) there is not in force a notice under section 12 or 13 of the *Occupational Superannuation Standards Act 1987* stating that the Commissioner is not satisfied that the fund satisfied the superannuation fund conditions in relation to a year of income later than the year of income mentioned in paragraph (d);

the trustee of the fund must use its best endeavours to ensure that the fund becomes a regulated superannuation fund at or before the beginning of the fund's 1994-95 year of income.

Contravention of subsection (7) is not an offence

- (8) A contravention of subsection (7) is not an offence. However, a contravention of subsection (7) is a ground for the grant of an injunction under section 315.

References to repealed provisions of OSSA

- (9) A reference in this section to a provision of the *Occupational Superannuation Standards Act 1987* includes a reference to the provision as it continues to apply, despite its repeal, because of the *Occupational Superannuation Standards Amendment Act 1993*.

trustee

trustee, in relation to a fund, scheme or trust, means:

- (a) if there is a trustee (within the ordinary meaning of that expression) of the fund, scheme or trust—the trustee; or
- (b) in any other case—the person who manages the fund, scheme or trust.

Definitions from the Commonwealth Retirement Savings Accounts Act 1997

RSA or retirement savings account

8 Definition of RSA

- (1) An **RSA**, or **retirement savings account**, is an account or a policy:
- (a) that is described as an RSA; and
 - (b) that is provided by an entity that is an RSA institution at the time the account is opened or the policy is issued; and
 - (c) that is capital guaranteed (see section 14); and
 - (d) that is held by a person who is an eligible person at the time the account is opened or the policy is issued (see section 13); and
 - (e) that, at the time that it is opened or issued, satisfies:
 - (i) the requirements in section 15; and
 - (ii) any prescribed criteria; and
 - (f) that is opened or issued on or after 1 July 1997 or such later day as is prescribed.
- (2) However, an **RSA**, or **retirement savings account**, can only be provided by a life insurance company as a policy.

Note: Section 16 provides that **policy** has the same meaning as in the *Life Insurance Act 1995*.

11 Who is an RSA institution?

- (1) A person is an **RSA institution** at a particular time if there is an approval under section 26 in force in relation to the person at that time which has not been suspended or revoked under section 33.
- (2) Only an ADI or a life insurance company or a prescribed financial institution can be approved as an RSA institution.

13 Who is an eligible person?

A person is an ***eligible person*** at a particular time if, at that time, the person satisfies any prescribed criteria.

RSA provider

12 Who is an RSA provider?

A person is an ***RSA provider*** at a particular time if, at that time, the person is the provider of one or more RSAs.

Note: Most RSA providers will also be RSA institutions. However, although every RSA provider must have been an RSA institution at one time, some may have ceased to be an RSA institution.

Definitions from the Commonwealth *Life Insurance Act 1995*

- 1) Subject to subsection (2), each of the following constitutes a life policy for the purposes of this Act:
 - (a) a contract of insurance that provides for the payment of money on the death of a person or on the happening of a contingency dependent on the termination or continuance of human life;
 - (b) a contract of insurance that is subject to payment of premiums for a term dependent on the termination or continuance of human life;
 - (c) a contract of insurance that provides for the payment of an annuity for a term dependent on the continuance of human life;
 - (d) a contract that provides for the payment of an annuity for a term not dependent on the continuance of human life but exceeding the term prescribed by the regulations for the purposes of this paragraph;
 - (e) a continuous disability policy;
 - (f) a contract (whether or not it is a contract of insurance) that constitutes an investment account contract;
 - (g) a contract (whether or not it is a contract of insurance) that constitutes an investment-linked contract.
- (2) A contract that provides for the payment of money on the death of a person is not a life policy if:
 - (a) by the terms of the contract, the duration of the contract is to be not more than one year; and
 - (b) payment is only to be made in the event of:
 - (i) death by accident; or
 - (ii) death resulting from a specified sickness.

Tax File Number

tax file number, in relation to a person, means a number issued to the person by the Commissioner, being a number that is either:

- (a) a number issued to the person under Division 2; or

(b) a number notified, before the commencement of this section, to the person as the person's income tax file number.

[from s.202A of the *Income Tax Assessment Act 1936* of the Commonwealth]